

Nann, Barbara

From: Smith, Suzanne
Sent: Monday, May 05, 2014 10:34 AM
To: Schoellkopf, Lynde; Watson, Lucinda; Nann, Barbara
Subject: Re: Meeting next Friday to discuss Arkansas Regional Haze SIP

From: Schoellkopf, Lynde
Sent: Monday, May 5, 2014 10:11:28 AM
To: Smith, Suzanne; Watson, Lucinda
Subject: FW: Meeting next Friday to discuss Arkansas Regional Haze SIP
Not sure who is lead on AK.

From: Kordzi, Joe
Sent: Monday, May 05, 2014 9:18 AM
To: Donaldson, Guy; Schoellkopf, Lynde
Cc: Medina, Dayana
Subject: FW: Meeting next Friday to discuss Arkansas Regional Haze SIP
I'm happy to talk to them – pls let me know if you have any problems with that. Thanks.
From: Casey Roberts [<mailto:casey.roberts@sierraclub.org>]
Sent: Friday, May 02, 2014 6:40 PM
To: Kordzi, Joe
Cc: Vicki Stamper
Subject: Meeting next Friday to discuss Arkansas Regional Haze SIP

Mr. Kordzi,

As you know, Sierra Club has been closely following EPA's regional haze work in the state of Arkansas. Would you be available to speak with me and Vicki Stamper (an air quality consultant) about EPA's current consideration of Arkansas' regional haze plan. We'd also like to share with you some information about how Texas sources are (or are not) being controlled in ways that could impact Caney Creek wilderness, and in turn, affect the regional haze plan for Arkansas.

Both Vicki and I are available this coming Friday, May 9th, from 10 am to noon, and 1 pm - 4 pm central time. If you have half an hour available in that time period, will you please let me know? If not, feel free to suggest some times the following week.

Sincerely,
Casey Roberts

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5710
(415) 977-5793 fax
casey.roberts@sierraclub.org

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Nann, Barbara

From: Schoellkopf, Lynde
Sent: Friday, May 09, 2014 2:58 PM
To: Nann, Barbara
Subject: RE: I submitted a leave slip for 4 pm today. have a good weekend!

Here's some notes I took on the AK call. Sierra mainly wanted to know what was left to do to get an action out the door:

Sierra: FIP was due on April 12th. What is status of this FIP? Guy: EPA aware FIP clock ran out. AK did not sit on their hands. They reached out to the sources of concern on BART sources. AK got additional information. AK SIP revision is not on horizon. EPA developing a FIP. Have something proposed in the October timeframe. Domtar – held up getting information from them. Intend to send a 114 letter.

Dayana: Focused on BART analyses at 6 sources and 9 units. Took long time for ADEQ to help with 5 factor analyses. Now have modeling and costs. Agree to levels that would go into this FIP. Final has to be signed by Administrator. Sierra: What is status of Flint creek plant BART analysis? Dayana: Been revised based on EPA feedback. Same for Whitebluff analysis have a more recent version. EPA has refined some of those analyses.

Sierra: Are there other BART determinations, that EPA had preview from the sources? Guy: Yes. ADEQ and facilities have shared, and EPA provided feedback on those.

Guy: WE will have to Look at BART determination a bit differently if have to do a FIP. Brief management on BART analyses.

Sierra: Asked if we'd re-do the AK RPG based on our revised CENRAP analysis for Texas that we are doing? Reductions assumed in cenrap modeling in TX that impact caney creek, those reductions didn't occur like projected in cenrap, so is that a reasonable progress goal at caney creek?

Discuss potential dates for FIP and deadlines. Sierra will check in few weeks.

From: Nann, Barbara
Sent: Friday, May 09, 2014 2:53 PM
To: Schoellkopf, Lynde
Subject: RE: I submitted a leave slip for 4 pm today. have a good weekend!

Have a great weekend!

From: Schoellkopf, Lynde
Sent: Friday, May 09, 2014 2:47 PM
To: Nann, Barbara
Cc: Parker, Cynthia
Subject: I submitted a leave slip for 4 pm today. have a good weekend!

Nann, Barbara

From: Medina, Dayana
Sent: Monday, June 23, 2014 12:20 PM
To: Nann, Barbara
Subject: FW: SC NOI- Arkansas RH
Attachments: [Untitled].pdf

Fyi- Here is an NOI from the Sierra Club dated April 21, which Lea just forwarded to me.

-----Original Message-----

From: Anderson, Lea
Sent: Monday, June 23, 2014 11:44 AM
To: Medina, Dayana
Subject: FW: SC NOI

Here is the NOI. It's unfortunate that Arkansas is planning on taking so long. I doubt that we'll be able to get SC to agree to that extended a schedule.

-----Original Message-----

From: EZTech_Printer [mailto:EZTek@epa.gov]
Sent: Monday, June 23, 2014 12:40 PM
To: Anderson, Lea
Subject: SC NOI

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.



SIERRA
CLUB
FOUNDED 1892

4/28 6:14 PM MWB
RECEIVED

2014 APR 23 AM 5:55

EXECUTIVE SECRETARIAT

Via Certified Mail

April 21, 2014

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N. W.
Washington, D.C. 20460

Re: Notice of intent to sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to issue a Federal Implementation Plan or approve a revised State Implementation Plan as required by 42 U.S.C. § 7410(c)(1)

Dear Administrator McCarthy,

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. part 54, Sierra Club hereby notifies you of our intent to sue for "a failure of the Administrator to perform an[] act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). Specifically, the Administrator of the Environmental Protection Agency (EPA) has violated 42 U.S.C. § 7410(c)(1) by failing to promulgate a Federal Implementation Plan (FIP) within two years of partially disapproving Arkansas' revised Regional Haze (RH) and Interstate Transport State Implementation Plans (SIPs). *See* 77 Fed. Reg. 14,604 (Mar. 12, 2012).

A. Clean Air Act Requirements

"The CAA requires that states develop and implement SIPs to reduce the pollution that causes visibility impairment over a wide geographic area, known as Regional Haze (RH)." 77 Fed. Reg. at 14,604. That state implementation plan must also contain provisions prohibiting emissions from within the state from interfering with

another state's obligation to protect visibility. *See* 42 U.S.C. § 4710(a)(2)(D)(i)(II). This requirement is one of the CAA's "good neighbor" provisions. *See* 77 Fed. Reg. at 14,604.

After a state submits a SIP or SIP revisions to the EPA, EPA must make a finding within six months as to whether the SIP submittal complies with the requirements of 42 U.S.C. § 7410(a)(2), a determination known as the completeness finding. 42 U.S.C. § 7410(k)(1)(B). Once a submittal is deemed complete, EPA has a mandatory duty to take final action on the submittal within 12 months by approving in full, disapproving in full, or approving in part and disapproving in part. *Id.* § 7410(k)(2)–(3). If EPA disapproves a SIP submittal in whole or in part, it has a mandatory duty to promulgate a FIP within two years of its disapproval decision. *Id.* § 7410(c)(1).

B. EPA's Failure to Promulgate a FIP for Arkansas Regional Haze in Violation of 42 U.S.C. § 7410(c)(1)

Between 2008 and 2011, Arkansas submitted SIP revisions intended to address the CAA's regional haze and interstate transport requirements. *See* 77 Fed. Reg. at 14,604. Arkansas also submitted a "State RH Rule" to address the requirements of both its RH and Interstate Transport SIPs. *Id.* On March 12, 2012, EPA disapproved of Arkansas' State RH Rule because it found that Arkansas "did not satisfy all the regulatory and statutory requirements in making [its best available retrofit technology] determinations." *Id.* at 14,605. For this reason, among others, EPA partially disapproved Arkansas' RH and Interstate Transport SIPs. *Id.* at 14,604–05.

EPA's disapproval decision took effect on April 11, 2012, thereby triggering EPA's "mandatory FIP clock" to issue a FIP by April 11, 2014. *See* 77 Fed. Reg. at 14,604, 14,606; 42 U.S.C. § 7410(c)(1) (requiring EPA to issue a FIP within two years of disapproving a SIP in whole or in part). EPA has failed to issue a FIP within the two year deadline after partially disapproving Arkansas' RH and Interstate Transport SIPs and is thus in violation of its mandatory duty under 42 U.S.C. § 7410(c)(1). Nor has EPA

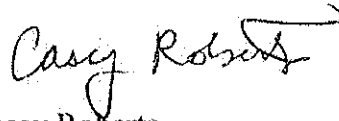
approved a revised plan submitted by Arkansas that corrects the deficiencies EPA identified on March 12, 2012.

As required by 40 C.F.R. § 54.3, the person providing this notice is:

Casey Roberts
Staff Attorney, Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
Phone: (415) 977-5710
Email: casey.roberts@sierraclub.org

Sierra Club would prefer to resolve this matter without the need for litigation. Quickly and fairly resolving this matter would be a clear indication that EPA intends to respect the rule of law. Therefore, we look forward to EPA contacting the undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, we will assume that you are not interested in settling this matter, and we will file a complaint.

Sincerely,

A handwritten signature in black ink that reads "Casey Roberts". The signature is written in a cursive, flowing style.

Casey Roberts
Counsel for Sierra Club

Nann, Barbara

From: Medina, Dayana
Sent: Wednesday, July 09, 2014 9:26 AM
To: Nann, Barbara
Subject: Arkansas RH

Hi Barbara,

I got a voicemail from Casey Roberts, the attorney with the Sierra Club who we talked to back in May about Arkansas RH. She said she would like to set up a call with us to discuss enforceable deadlines. I mentioned it to Guy, and he said to ask you to please give her a call and talk to her. Her phone number is 415-977-5710. Thanks!

Dayana Medina

U.S. Environmental Protection Agency, Region 6
Multimedia Planning and Permitting Division
Air Planning Section (6PD-L)
214-665-7241

Nann, Barbara

From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Monday, July 14, 2014 5:46 PM
To: Nann, Barbara
Subject: Arkansas regional haze discussion

Hi Barbara,

I think that 10 am PT / noon CT / 1 ET will work for Sierra Club this Thursday to discuss Arkansas regional haze issues. I am still confirming with one member of the team, but wanted to let you know this potential time sooner rather than later. I will let you know as soon as I have full confirmation from the relevant folks here, and please let me know if that time does not work for you or Ms. Anderson.

Thank you,
Casey Roberts

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Staff Attorney
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Nann, Barbara

From: Nann, Barbara
Sent: Tuesday, July 15, 2014 11:14 AM
To: Casey Roberts
Cc: Anderson, Lea
Subject: RE: Arkansas regional haze discussion

It looks like Lea and myself are available at that time. Just let me know if that time firms up and I can reserve a conference line.

Barbara

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Monday, July 14, 2014 5:46 PM
To: Nann, Barbara
Subject: Arkansas regional haze discussion

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Thank you,
Casey Roberts

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Nann, Barbara

From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Tuesday, July 15, 2014 5:23 PM
To: Nann, Barbara
Cc: Anderson, Lea
Subject: Re: Arkansas regional haze discussion

Hi Barbara,

My apologies for the delay. Noon CT on Thursday works for all of us here -- please send me the conference line information when you have a moment. For your information, the people joining for Sierra Club will be myself, Tony Mendoza & Elena Saxonhouse (all attorneys at the Club), and Glen Hooks, who is the Executive Director of our Arkansas chapter.

I look forward to our conversation.

Casey

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
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Thank you,

Casey Roberts

Casey Roberts

Staff Attorney

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Nann, Barbara

From: Nann, Barbara
Sent: Wednesday, July 16, 2014 8:51 AM
To: Casey Roberts
Cc: Anderson, Lea; Medina, Dayana
Subject: RE: Arkansas regional haze discussion

Thanks, Casey. Lea Anderson, Office of General Counsel, and Dayana Medina, program assigned to AR RH will participate on the call as well as myself. The call in # is 1-866-299-3188 conference code is 2146652157.

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Tuesday, July 15, 2014 5:23 PM
To: Nann, Barbara
Cc: Anderson, Lea
Subject: Re: Arkansas regional haze discussion

Hi Barbara,

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Barbara

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]

Sent: Monday, July 14, 2014 5:46 PM

To: Nann, Barbara

Subject: Arkansas regional haze discussion

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Thank you,

Casey Roberts

Casey Roberts

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Nann, Barbara

Subject: AR RH Call with Sierra Club
Location: R6-ConfRm-PineTree-06O15

Start: Thu 7/17/2014 12:00 PM
End: Thu 7/17/2014 12:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Nann, Barbara
Required Attendees: Anderson, Lea; Medina, Dayana
Resources: R6-ConfRm-PineTree-06O15

Call in # 1-866-299-3188. Conference Code 2146652157.

Nann, Barbara

Subject: Canceled: AR RH Call with Sierra Club
Location: ORC Conference Room

Start: Thu 7/17/2014 12:00 PM
End: Thu 7/17/2014 12:30 PM
Show Time As: Free

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Nann, Barbara
Required Attendees: Anderson, Lea; Medina, Dayana
Resources: R6-ConfRm-PineTree-06O15

Importance: High

Call in # 1-866-299-3188. Conference Code 2146652157.

Nann, Barbara

From: Medina, Dayana
Sent: Wednesday, July 16, 2014 9:16 AM
To: Nann, Barbara
Subject: RE: Premeeting for AR RH Call with Sierra Club

Yes I'm available

From: Nann, Barbara
Sent: Wednesday, July 16, 2014 9:14 AM
To: Anderson, Lea; Medina, Dayana
Subject: Premeeeting for AR RH Call with Sierra Club

Let's have a precall to discuss proposed dates for our proposal and final action that we should offer Sierra Club (even though other tentative dates have been floated to SC). Is everyone available at 11 am tomorrow (Thursday) for a quick 10 minute call?

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Wednesday, July 30, 2014 1:56 PM
To: Nann, Barbara
Cc: Casey Roberts
Subject: Arkansas regional haze

Barbara - Casey and I were hoping to speak with you for a few minutes to follow-up on our Arkansas haze discussion. We're generally free tomorrow and Friday afternoon. Is there a time that would work for you?
Thanks. Tony

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

Nann, Barbara

From: Nann, Barbara
Sent: Wednesday, July 30, 2014 4:35 PM
To: Tony Mendoza
Cc: Casey Roberts; Tomasovic, Brian
Subject: RE: Arkansas regional haze

Thank you Tony for your email. I am currently in DC in meetings this week. Can we schedule the call for this Monday. I am available anytime but 11am central. Also as a heads up, I have just been tasked with focus primarily with Texas and Oklahoma Regional. Brian Tomasovic is babysitting AR RH until then. After this call, Brian will be the primary contact for the next few months. I can introduce more formally on the next call.

Barbara

Barbara A. Nann
Assistant Regional Counsel
EPA, Region 6

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Wednesday, July 30, 2014 1:56 PM
To: Nann, Barbara
Cc: Casey Roberts
Subject: Arkansas regional haze

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(415) 977-5793 fax
tony.mendoza@sierraclub.org

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Thursday, July 31, 2014 11:42 AM
To: Nann, Barbara
Cc: Casey Roberts; Tomasovic, Brian
Subject: Re: Arkansas regional haze

Hi Barbara - Please say hello to DC (my former home) for me. Casey and I are more or less free anytime on Monday. Why don't we say 1 p.m. Central (11 a.m. Pacific)? Should we just plan to call your office #? Brian, I look forward to meeting you. Tony

On Wed, Jul 30, 2014 at 2:34 PM, Nann, Barbara <nann.barbara@epa.gov> wrote:

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Nann, Barbara

From: Nann, Barbara
Sent: Friday, August 01, 2014 8:13 PM
To: Tony Mendoza
Cc: Casey Roberts; Tomasovic, Brian
Subject: RE: Arkansas regional haze

Thanks, Tony. I need to check with Lea Anderson if she is available but I have tentatively slotted our meeting for 1 pm central/2 pm eastern. I have a conference call line 1-866-299-3188. Code 2146652157.

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Thursday, July 31, 2014 11:42 AM
To: Nann, Barbara
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tony.mendoza@sierraclub.org

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Friday, August 01, 2014 8:30 PM
To: Nann, Barbara
Cc: Casey Roberts; Tomasovic, Brian
Subject: Re: Arkansas regional haze

Sounds good, Barbara. We'll be prepared to talk then.

On Fri, Aug 1, 2014 at 6:12 PM, Nann, Barbara <nann.barbara@epa.gov> wrote:

Thanks, Tony. I need to check with Lea Anderson if she is available but I have tentatively slotted our meeting for 1 pm central/2 pm eastern. I have a conference call line 1-866-299-3188. Code 2146652157.

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Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
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To: Nann, Barbara
Cc: Casey Roberts; Tomasovic, Brian
Subject: Re: Arkansas regional haze

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Thanks, Tony. I need to check with Lea Anderson if she is available but I have tentatively slotted our meeting for 1 pm central/2 pm eastern. I have a conference call line 1-866-299-3188. Code 2146652157.

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Thursday, July 31, 2014 11:42 AM
To: Nann, Barbara
Cc: Casey Roberts; Tomasovic, Brian
Subject: Re: Arkansas regional haze

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Assistant Regional Counsel

EPA, Region 6

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From: Nann, Barbara
Sent: Monday, August 04, 2014 12:55 PM
To: Anderson, Lea
Subject: FW: Arkansas regional haze

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Nann, Barbara

From: Nann, Barbara
Sent: Monday, August 04, 2014 1:04 PM
To: Tony Mendoza; Anderson, Lea; lea.anderson3@verizon.net
Cc: Casey Roberts; Tomasovic, Brian; Medina, Dayana
Subject: RE: Arkansas regional haze

Tony,

Based on our schedule for today, we are available at 3:30pm central time if you are available. Same call in # 1-866-299-3188. Conference code 2146652157.

Barbara A. Nann
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
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Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Monday, August 04, 2014 1:16 PM
To: Nann, Barbara
Cc: Anderson, Lea; lea.anderson3@verizon.net; Casey Roberts; Tomasovic, Brian; Medina, Dayana
Subject: Re: Arkansas regional haze

Great. That works. Thank you for being flexible.

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From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Wednesday, August 06, 2014 12:22 PM
To: Nann, Barbara
Cc: Anderson, Lea; lea.anderson3@verizon.net; Casey Roberts; Tomasovic, Brian; Medina, Dayana
Subject: Re: Arkansas regional haze
Attachments: Complaint - Regional Haze Deadline Action FINAL (File Stamped).pdf

Barbara, Dayana, Lea, Brian - Attached is a courtesy copy of the Arkansas regional haze complaint that we filed today in San Francisco. Casey and I look forward to speaking with you soon. Tony

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Sent: Wednesday, August 13, 2014 1:37 PM
To: Nann, Barbara; Tomasovic, Brian
Subject: Re: Arkansas regional haze

Barbara, Brian - I just wanted to check in to see if you have had the opportunity to deliberate further on possibly settling the Arkansas regional haze case? Do you think we should schedule a call for sometime next week? I will be on vacation during the last week of August (25th through 29th) so if we don't talk next week, we'd have to hold off till September. Tony

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Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Friday, August 29, 2014 10:08 AM
To: Tomasovic, Brian
Cc: Nann, Barbara; Anderson, Lea
Subject: RE: Arkansas Regional Haze

I just got a voice mail from Casey indicating that there was both good and bad news re: their client discussion. I'll arrange a call with them. Today I could do a call between 2:30-5 pm Eastern or anytime Monday. Let me know what works.

Leslie

From: Tomasovic, Brian [mailto:Tomasovic.Brian@epa.gov]
Sent: Friday, August 22, 2014 6:14 PM
To: Hill, Leslie (ENRD)
Cc: Nann, Barbara; Anderson, Lea
Subject: RE: Arkansas Regional Haze

Thanks. That makes good sense to me. I see they'd asked for fees in their complaint, so it seems a fair point to pin down that commitment.

And as an update for Lea:

Sierra Club was going to circle back with their clients, but they seemed ready to support a proposal date of Feb. 15 and a final date of Dec. 15—i.e., the 10 months that Dayana and Guy felt to be reasonable and workable considering all resource commitments.

Proposed BART for one of the Domtar units is one major area of uncertainty that complicates our ability to get to proposal much earlier than February. We'd also impressed on Sierra Club the need to have generous spacing between our finalization of the Arkansas FIP and the Texas FIP, especially given the overlap in key personnel and the inter-office coordination burdens of a FIP.

We hadn't discussed the mechanics of publishing notice of a proposed settlement agreement for comment, but I know Barbara and Lea are pros on this.

At least until September 8, Barbara is the Region 6 point person for Arkansas haze. She actually joined the call a few minutes into it, and she's also feeling good about the tentative timetable discussed today.

From: Hill, Leslie (ENRD) [mailto:Leslie.Hill@usdoj.gov]
Sent: Friday, August 22, 2014 4:41 PM
To: Tomasovic, Brian
Cc: Nann, Barbara
Subject: Arkansas Regional Haze

Brian/Barbara –

My management is okay with us foregoing the venue motion w/ the plaintiff's agreement not to seek fees. One of our fee issues is that the ND Cal rates are ridiculous and we've not been successful in getting them down

when we've litigated the issue, so if it doesn't belong in ND Cal, we try to move it. I'll get you a draft CD on Monday. Have a good weekend.

Leslie

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Tuesday, September 02, 2014 11:31 AM
To: Casey Roberts
Cc: Tony Mendoza; Medina, Dayana; Nann, Barbara; Anderson, Lea; Tomasovic, Brian
Subject: RE: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

Casey --

Sorry about that. Yes, that time works for us.

Conference Info: (866) 410-9426, Code: 4961010938#.

Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Tuesday, September 02, 2014 12:03 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Medina, Dayana; Nann, Barbara; Anderson, Lea; Tomasovic, Brian
Subject: Re: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

Hi Leslie,

I haven't heard back from you about whether 10 am PT this morning works for EPA, so perhaps we should plan for something later today? Tony and I are both available most of today.

Casey

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
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Sent: Tuesday, August 19, 2014 1:59 PM
To: Tomasovic, Brian
Cc: Medina, Dayana; Nann, Barbara; casey.roberts@sierraclub.org; Hill, Leslie (ENRD)
Subject: Re: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

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From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Tuesday, September 02, 2014 11:49 AM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Medina, Dayana; Nann, Barbara; Anderson, Lea; Tomasovic, Brian
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Sent: Tuesday, August 19, 2014 1:59 PM

To: Tomasovic, Brian

Cc: Medina, Dayana; Nann, Barbara; casey.roberts@sierraclub.org; Hill, Leslie (ENRD)

Subject: Re: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

Thank you, Brian. That time works for me. Talk to you Friday. Tony

On Tue, Aug 19, 2014 at 10:57 AM, Tomasovic, Brian <Tomasovic.Brian@epa.gov> wrote:

Tony, we are wondering whether this time will work for you? If not, it would be great if you could propose an alternate time for Friday or Thursday.

Like you, I'll have an extended absence beginning next week, so it'll be good to have a check-in, regardless.

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tony.mendoza@sierraclub.org

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Tuesday, September 09, 2014 12:04 PM
To: Hill, Leslie (ENRD)
Cc: Casey Roberts; Anderson, Lea; Tomasovic, Brian; Nann, Barbara; Medina, Dayana
Subject: Re: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

Great. We can use this conference call info for Thursday: conference #: 866-501-6174. Passcode: 2030289.

On Tue, Sep 9, 2014 at 9:48 AM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

10:30am Pacific on Thursday works for me. Let's do that.

Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Tuesday, September 09, 2014 12:47 PM
To: Anderson, Lea
Cc: Tomasovic, Brian; Tony Mendoza; Hill, Leslie (ENRD); Nann, Barbara; Medina, Dayana

Subject: Re: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

Sounds like Thursday at either 9 or 10:30 am Pacific would work, depending on Leslie's availability?

Casey

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On Tue, Sep 9, 2014 at 7:57 AM, Anderson, Lea <anderson.lea@epa.gov> wrote:

I can't do this afternoon (after 9 a.m. Pacific) or the times on Wednesday that you are available. I'm available Thursday until 2 pm Pacific and Friday until 11 am Pacific.

From: Tomasovic, Brian
Sent: Tuesday, September 09, 2014 9:43 AM
To: Tony Mendoza; Hill, Leslie (ENRD); Nann, Barbara; Anderson, Lea; Medina, Dayana
Cc: Casey Roberts
Subject: RE: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

I can't do 1-2 Pacific today, but I can otherwise meet the Tues./Wed times on offer. I'm also clear Thurs. and Fri.

Brian

From: Tony Mendoza [<mailto:tony.mendoza@sierraclub.org>]
Sent: Monday, September 08, 2014 7:46 PM
To: Hill, Leslie (ENRD); Tomasovic, Brian; Nann, Barbara; Anderson, Lea; Medina, Dayana
Cc: Casey Roberts
Subject: Re: Region 6, DOJ call with Plaintiff Sierra Club Re: Arkansas Haze Deadline Suit

Leslie et al. - Casey and I would like to schedule another call to move our settlement forward. We are free anytime tomorrow (Tuesday) after 9 a.m. Pacific and anytime Wednesday except for 11 a.m. to noon and 1 p.m. to 2 p.m. (Pacific). Do any of those times work for you? If none do, please propose a time Thursday or Friday that works for you. Thank you. Tony

On Tue, Sep 2, 2014 at 9:48 AM, Casey Roberts <casey.roberts@sierraclub.org> wrote:

Great -- we will call you in a few minutes.

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Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Wednesday, October 15, 2014 2:16 PM
To: Tony Mendoza; Casey Roberts
Cc: Nann, Barbara; Anderson, Lea
Subject: Draft Consent Decree - Case No. 3:14-cv-03541-JD
Attachments: ENV_DEFENSE-#692054-v4-Sierra_Club_v_McCarthy_(AR_Haze)_Briefs_Draft_Proposed_Consent_Decree.DOC

Tony/Casey –

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice
5 LESLIE M. HILL (D.C. Bar No. 476008)
6 Leslie.Hill@usdoj.gov
7 Environmental Defense Section
8 601 D Street N.W., Suite 8000
9 Washington D.C. 20004
10 Telephone (202) 514-0375
11 Facsimile (202) 514-8865

12 Attorneys for Defendant

13 CASEY A. ROBERTS (CA Bar No. 253474)
14 SIERRA CLUB
15 85 Second Street, 211d Floor
16 San Francisco, CA 94105
17 (415) 977-5710
18 (415) 977-5793 (facsimile)
19 casey.roberts@sierraclub.org

20 [additional attorneys for Plaintiff included in signature block]

21 Attorneys for Plaintiff

22 **IN THE UNITED STATES DISTRICT COURT**

23 **FOR THE _____ DISTRICT OF _____**

24 SIERRA CLUB,

25 Plaintiff,

26 v.

27 GINA McCARTHY, in her official capacity
28 as the Administrator of the United States
Environmental Protection Agency,

Defendant.

Case No.

[PROPOSED] CONSENT DECREE

[PROPOSED] CONSENT DECREE
CASE NO.

1 WHEREAS, on August 6, 2014, Plaintiff Sierra Club ("Plaintiff") filed the above-
2 captioned matter against Gina McCarthy, in her official capacity as Administrator of the
3 United States Environmental Protection Agency (hereinafter "EPA" or "Defendant");

4 WHEREAS, Plaintiff alleges that EPA has failed to undertake certain non-
5 discretionary duties under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and
6 that such alleged failure is actionable under section 304(a)(2) of the CAA, § 7604(a)(2);

7 WHEREAS, Plaintiff alleges that EPA has failed to perform a duty mandated by
8 CAA section 110(c)(1)(B), 42 U.S.C. § 7410(c)(1)(B), to promulgate a Federal
9 implementation plan within 2 years after disapproving a state implementation plan
10 ("SIP") submission in whole or in part;

11 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA disapproved, in part,
12 a revision to the Arkansas SIP intended to address the regional haze ("RH") requirements
13 of section 169A(b)(2)(B), 42 U.S.C. § 7491(b)(2)(B), and the implementing regulations
14 set forth at 40 C.F.R. § 51.308(d)(1)(A), *Final Rule*, 77 Fed. Reg. 14,604 (Mar. 12,
15 2014);

16 WHEREAS, Plaintiff alleges that on March 12, 2012, EPA also partially
17 disapproved the portion of the Arkansas SIP submittal that addresses the visibility
18 requirement of section 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997
19 8-hour ozone, *Final Rule*, 62 Fed. Reg. 38,856 (Jul 18, 1997), and 1997 fine particulate
20 matter ("PM_{2.5}"), *Final Rule*, 62 Fed. Reg. 38,652 (Jul 18, 1997), national ambient air
21 quality standards ("NAAQS") and that the provisions to prohibit emissions from
22 interfering with measures required in another state to protect visibility, 77 Fed. Reg. at
23 14,604;

24 WHEREAS, on March 12, 2012, EPA stated that it "must, within 24 months
25 following a final disapproval, either approve a SIP or promulgate a Federal
26 Implementation Plan ["FIP"]. We will of course consider, and would prefer, approving a
27 SIP if the state submits a revised plan that we can approve before the expiration of the
28

1 mandatory FIP clock for the portions of the SIP we are disapproving in this rulemaking
2 action,” 77 Fed. Reg. at 14,606;

3 WHEREAS, EPA did not, by March 12, 2012, promulgate a regional haze FIP or
4 approve a revised regional haze SIP for Arkansas;

5 WHEREAS, EPA did not, by March 12, 2012, promulgate a FIP or approve a
6 revised SIP for Arkansas addressing the requirements of section 110(a)(2)(D)(i)(II), 42
7 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS and the 1997 PM_{2.5}
8 NAAQS;

9 WHEREAS, the relief requested in the Complaint includes, among other things,
10 an order from this Court to establish a date certain by which EPA must fulfill its
11 obligations;

12 WHEREAS, Plaintiff and EPA have agreed to a settlement of this action without
13 admission of any issue of fact or law, except as expressly provided herein;

14 WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not
15 waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA
16 action;

17 WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate
18 and equitable resolution of all the claims in this matter and therefore wish to effectuate a
19 settlement;

20 WHEREAS, it is in the interest of the public, Plaintiff Sierra Club, Defendant
21 EPA, and judicial economy to resolve this matter without protracted litigation;

22 WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this
23 matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. §
24 7604(a)(2);

25 WHEREAS, the parties dispute whether venue is proper in the Northern District
26 of California pursuant to 28 U.S.C. § 1391(e) and N.D. Cal. Civ. Local Rule 3-2(c)-(d);
27 and
28

1 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
2 Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act;

3 NOW THEREFORE, before the taking of testimony, without trial or
4 determination of any issues of fact or law, and upon the consent of Plaintiff Sierra Club
5 and Defendant EPA, it is hereby ordered, adjudged and decreed that:

6 1. The appropriate EPA official shall:

7 a. either sign a notice of proposed rulemaking in which it proposes
8 approval of a revised SIP submission from Arkansas, promulgation of a FIP, or partial
9 approval of a revised SIP submission and promulgation of a partial FIP for Arkansas that
10 collectively addresses the deficiencies in Arkansas' regional haze SIP identified by EPA
11 its March 12, 2012 action, 77 Fed. Reg. 14,604, no later than February 16, 2015; and sign
12 a notice of final rulemaking to address these requirements no later than December 15,
13 2015; and

14 b. either sign a notice of proposed rulemaking in which it proposes
15 approval of a revised SIP submission, promulgation of a FIP, or partial approval of a
16 revised SIP submission and promulgation of a partial FIP for Arkansas that collectively
17 addresses the deficiencies in Arkansas' SIP related to the requirements of CAA section
18 110(a)(2)(D)(i)(II), 42 U.S.C. § 7410(a)(2)(D)(i)(II), for the 1997 8-hour ozone NAAQS
19 and the 1997 PM_{2.5} NAAQS, identified by EPA its March 12, 2012 action, 77 Fed. Reg.
20 14,604, no later than February 16, 2015; and sign a notice of final rulemaking to address
21 these requirements no later than December 15, 2015.

22 2. EPA shall, within 15 days of signature, deliver notice of each action taken
23 pursuant to paragraph 1 of this Consent Decree to the Office of the Federal Register for
24 review and publication.

25 3. After EPA has completed the actions set forth in Paragraph 1 of this Consent
26 Decree and after notice of each proposed and final action required by paragraph 1 has
27 been published in the Federal Register, EPA may move to have this Decree terminated
28

1 and the action dismissed. Plaintiff shall have fourteen (14) days in which to respond to
2 such motion, unless the parties stipulate to a longer time for Plaintiff to respond.

3 4. The deadlines established by this Consent Decree may be extended (a) by
4 written stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon
5 motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure
6 and upon consideration of any response by Plaintiff and any reply by EPA. Any other
7 provision of this Consent Decree also may be modified by the Court following motion of
8 an undersigned party for good cause shown pursuant to the Federal Rules of Civil
9 Procedure and upon consideration of any response by a non-moving party and any reply.

10 5. If a lapse in appropriations occurs within one hundred and twenty (120) days
11 prior to the deadline in Paragraph 1 in this Decree, that deadline shall be extended
12 automatically one day for each day of the lapse in appropriations.

13 6. Plaintiff and EPA agree that this Consent Decree shall constitute a complete
14 and final settlement of all claims that Plaintiff has asserted in this case. The Sierra Club
15 therefore discharges and covenants not to sue the United States, including EPA, for any
16 such claims.

17 7. In the event of a dispute between Plaintiff and EPA concerning the
18 interpretation or implementation of any aspect of this Consent Decree, the disputing party
19 shall provide the other party with a written notice outlining the nature of the dispute and
20 requesting informal negotiations. These parties shall meet and confer in order to attempt
21 to resolve the dispute. If these parties are unable to resolve the dispute within ten (10)
22 business days after receipt of the notice, either party may petition the Court to resolve the
23 dispute.

24 8. No motion or other proceeding seeking to enforce this Consent Decree or for
25 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 7
26 has been followed, and the moving party has provided the other party with written notice
27 received at least ten (10) business days before the filing of such motion or proceeding.
28

1 9. The deadline for filing a motion for costs of litigation (including attorney fees)
2 for activities performed prior to entry of the Consent Decree is hereby extended until
3 ninety (90) days after this Consent Decree is entered by the Court. During this period,
4 the Parties shall seek to resolve informally any claim for costs of litigation (including
5 attorney fees), and if they cannot, Plaintiff will file a motion for costs of litigation
6 (including attorney fees) or a stipulation or motion to extend the deadline to file such a
7 motion. EPA reserves the right to oppose any such request.

8 10. This Court shall retain jurisdiction over this matter to enforce the terms of
9 this Consent Decree and to consider any requests for costs of litigation, including
10 attorney fees.

11 11. Nothing in the terms of this Consent Decree shall be construed (a) to confer
12 upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction
13 of the United States Courts of Appeals under CAA section 307(b)(1),
14 42 U.S.C. § 7607(b)(1) or (b) to waive any claims, remedies, or defenses that the parties
15 may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

16 12. Nothing in this Consent Decree shall be construed to limit or modify any
17 discretion accorded EPA by the Clean Air Act or by general principles of administrative
18 law in taking the actions which are the subject of this Consent Decree, including the
19 discretion to alter, amend, or revise any final actions promulgated pursuant to this
20 Consent Decree. EPA's obligation to perform each action specified in this Consent
21 Decree does not constitute a limitation or modification of EPA's discretion within the
22 meaning of this paragraph.

23 13. Except as expressly provided herein, nothing in this Consent Decree shall be
24 construed as an admission of any issue of fact or law nor to waive or limit any claim,
25 remedy, or defense, on any grounds, related to any final action EPA takes with respect to
26 the actions addressed in this Consent Decree.

27 14. It is hereby expressly understood and agreed that this Consent Decree was
28 jointly drafted by Plaintiff and EPA. Accordingly, the parties hereby agree that any and

1 all rules of construction to the effect that ambiguity is construed against the drafting party
2 shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of
3 this Consent Decree.

4 15. The parties agree and acknowledge that before this Consent Decree can be
5 finalized and entered by the Court, EPA must provide notice of this Consent Decree in
6 the Federal Register and an opportunity for public comment pursuant to CAA section
7 113(g), 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and
8 comment, the Administrator and/or the Attorney General, as appropriate, shall promptly
9 consider any written comments in determining whether to withdraw or withhold their
10 consent to the Consent Decree, in accordance with CAA section 113(g). If the
11 Administrator and/or the Attorney General do not elect to withdraw or withhold consent,
12 EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

13 16. Any notices required or provided for by this Consent Decree shall be in
14 writing, via electronic mail or other means, and sent to the following (or to any new
15 address of counsel as filed and listed in the docket of the above-captioned matter, at a
16 future date):

17 For Plaintiff Sierra Club:

18 Casey A. Roberts
19 Tony G. Mendoza
20 Sierra Club
21 85 Second Street, 211d Floor
22 San Francisco, CA 94105
23 (415) 977-5710 (Roberts)
(415) 977-5589 (Mendoza)
(415) 977-5793 (facsimile)
casey.roberts@sierraclub.org
tony.mendoza@sierraclub.org

24 For Defendant EPA:

25 Leslie M. Hill
26 U.S. Department of Justice
27 Environment & Natural Resources Division
28 Environmental Defense Section
601 D Street N.W., Suite 8000
Washington D.C. 20004
Tel. (202) 514-0375

Email: leslie.hill@usdoj.gov

17. EPA and Plaintiff recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

18. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the proposed Consent Decree may not be used as evidence in any litigation between the parties.

19. The undersigned representatives of Plaintiff Sierra Club and Defendant EPA certify that they are fully authorized by the party they represent to consent to the Court's entry of the terms and conditions of this Decree.

SO ORDERED on this _____ day of _____, 2014.

JAMES DONATO
UNITED STATES DISTRICT JUDGE

//

//

1 COUNSEL FOR PLAINTIFF:

2
3 /s/ [first m. last] (email authorization 9/XX/14)
4 CASEY A. ROBERTS (CA Bar No. 253474)
5 SIERRA CLUB
6 85 Second Street, 211d Floor
7 San Francisco, CA 94105
8 (415) 977-5710
9 (415) 977-5793 (facsimile)
10 casey.roberts@sierraclub.org

11 TONY G. MENDOZA (admitted *Pro Hac Vice*)
12 SIERRA CLUB
13 85 Second Street, 2nd Floor
14 San Francisco, CA 94105
15 (415) 977-5589
16 (415) 977-5793 (facsimile)
17 tony.mendoza@sierraclub.org

18 *Attorneys for Plaintiff Sierra Club*

19 COUNSEL FOR DEFENDANT:

20 SAM HIRSCH
21 Acting Assistant Attorney General
22 Environment & Natural Resources Division

23 /s/ Leslie M. Hill
24 LESLIE M. HILL (D.C. Bar No. 476008)
25 Environmental Defense Section
26 601 D Street N.W., Suite 8000
27 Washington D.C. 20004
28 Tel. (202) 514-0375
Email: Leslie.Hill@usdoj.gov

Attorneys for Defendant EPA

Of counsel:
Barbara A. Nann
Assistant Regional Counsel
Region 6
U.S. Environmental Protection Agency

Nann, Barbara

From: Tony Mendoza <tony.mendoza@sierraclub.org>
Sent: Thursday, October 16, 2014 4:53 PM
To: Hill, Leslie (ENRD)
Cc: Casey Roberts; Nann, Barbara; Anderson, Lea
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie -

Thank you for sending us this draft consent decree. We'll get you comments on the draft as soon as we can (likely be early next week) and will also begin our internal settlement-approval process.

Further, Sierra Club will not oppose your motion to transfer venue to the Northern District of Texas. We'd considered the same for Arkansas federal district court, though we have doubts about venue being proper in that court. While we continue to believe that San Francisco is an appropriate venue, we want to see this matter resolved as expeditiously as possible and a prolonged dispute over venue is not in our interest. We will consider filing something to indicate our non-opposition, if you thought it necessary or helpful.

Tony

On Wed, Oct 15, 2014 at 12:15 PM, Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov> wrote:

Tony/Casey --

Attached please find a draft consent decree. If we're able to transfer the case, it would seem most efficient to proceed with our respective management/client reviews in the meantime. That way, assuming we receive management/client approval, we'd be in a position to lodge the CD quickly upon transfer. Let us know if that approach works for you.

Leslie

--
Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Friday, October 17, 2014 9:21 AM
To: 'Tony Mendoza'
Cc: Casey Roberts; Nann, Barbara; Anderson, Lea
Subject: RE: Draft Consent Decree - Case No. 3:14-cv-03541-JD
Attachments: ENV_DEFENSE-#674296-v1-SC_v_EPA_(Nevada_SIP)_Briefs_Statement_of_Non-
Opposition.DOC

Thanks Tony! That's great Friday news. We'll also begin our respective approval processes.

Since 28 USC 1404(a) does not allow for transfers via stipulation, we'll go ahead and file our motion. Under the ND Cal Local Rules, even if a motion is presented as unopposed, you'll need to file a statement of non-opposition. I've attached an example from another Sierra Club case.

Leslie

From: Tony Mendoza [mailto:tony.mendoza@sierraclub.org]
Sent: Thursday, October 16, 2014 5:53 PM
To: Hill, Leslie (ENRD)
Cc: Casey Roberts; Nann, Barbara; Anderson, Lea
Subject: Re: Draft Consent Decree - Case No. 3:14-cv-03541-JD

Leslie -

Thank you for sending us this draft consent decree. We'll get you comments on the draft as soon as we can (likely be early next week) and will also begin our internal settlement-approval process.

Further, Sierra Club will not oppose your motion to transfer venue to the Northern District of Texas. We'd considered the same for Arkansas federal district court, though we have doubts about venue being proper in that court. While we continue to believe that San Francisco is an appropriate venue, we want to see this matter resolved as expeditiously as possible and a prolonged dispute over venue is not in our interest. We will consider filing something to indicate our non-opposition, if you thought it necessary or helpful.

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Leslie

--

Tony G Mendoza
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5589
(415) 977-5793 fax
tony.mendoza@sierraclub.org

1 JAMES N. SAUL
2 McGlivery, West, and Bender
3 211 S. Paterson Street, Suite 320
4 Madison, WI 53703
5 Telephone (608) 310-3560

6 KRISTIN HENRY
7 Sierra Club
8 85 Second Street, 2nd Floor
9 San Francisco, CA 94105
10 Telephone (415) 977-5716

11 Attorneys for Plaintiff

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**
16

17 SIERRA CLUB,

18 Plaintiff,

19 v.

20 GINA McCARTHY, Administrator of the
21 United States Environmental Protection
22 Agency,

23 Defendant.

Case No. 3:12-cv-4078-JST

**STATEMENT OF NON-OPPOSITION TO
MOTION TO TERMINATE CONSENT
DECREE**

24 Pursuant to Civil L.R. 7-3(b), Plaintiff Sierra Club does not oppose Defendant's
25 Motion to Terminate Consent Decree (Dkt. No. 43).

26 //

27 //

28 //

Respectfully submitted,

1
2 Date: March 11, 2014
3
4

5 /s/ James N. Saul
6 JAMES N. SAUL
7 saul@mwbattoorneys.com
8 211 S. Paterson Street, Suite 320
9 Madison, WI 53703
10 Telephone (608) 310-3560

11 KRISTIN HENRY
12 Kristin.Henry@sierraclub.org
13 Sierra Club
14 85 Second Street, 2nd Floor
15 San Francisco, CA 94105
16 Telephone (415) 977-5716

17 *Attorneys for Plaintiff*
18
19
20
21
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23
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25
26
27
28

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Monday, October 27, 2014 11:13 AM
To: Tony Mendoza; Casey Roberts
Cc: Nann, Barbara; Anderson, Lea
Subject: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference
Attachments: ENV_DEFENSE-#700635-v1-
SC_v_EPA_(AR_Haze)_Briefs_Joint_Stipulation_re__CMC.DOC

Tony/Casey –

We have the initial CMC coming up next week and the 26(f) statement due a week in advance. I propose that we request a continuance pending the court's decision on the motion to transfer. That also has the automatic effect of pushing out the 26(f) date as well. I'm also out of the country next week, so I would need to request a continuance in any event. In the attached draft proposed order, I left the date of the continuance blank so the court could fill that in. Let me know if this is okay or if you have comments. I didn't include the ADR conference in the continuance because that is on the phone and lasts only a few minutes.

Leslie

1 SAM HIRSCH
2 Acting Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice
5 LESLIE M. HILL (D.C. Bar No. 476008)
6 Leslie.Hill@usdoj.gov
7 Environmental Defense Section
8 601 D Street N.W., Suite 8000
9 Washington D.C. 20004
10 Telephone (202) 514-0375
11 Facsimile (202) 514-8865

12 *Attorneys for Defendant*

13 [Additional counsel listed on signature page]

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 SIERRA CLUB,

18 Plaintiff,

19 v.

20 GINA McCARTHY, in her official capacity
21 as the Administrator of the United States
22 Environmental Protection Agency,

23 Defendant.

Case No. 3:14-cv-03541-JD

**JOINT STIPULATION
CONTINUING CASE
MANAGEMENT CONFERENCE
AND [PROPOSED] ORDER**

Date: November 5, 2014

Time: 1:30 pm

Courtroom 11, 19th Floor

24 Pursuant to Civil L.R. 6-2, Defendant Gina McCarthy, in her official capacity as
25 Administrator of the United States Environmental Protection Agency ("EPA"), and Plaintiff
26 Sierra Club jointly stipulate and request that the Court order a continuance of the initial Case
27 Management Conference ("CMC") set for November 5, 2014 (Dkt. No. 7) until after the
28 Court rules on the pending Motion to Transfer Venue filed by EPA pursuant to 28 U.S.C. §
1404(a) on October 20, 2014 (Dkt. No. 19). Plaintiff does not oppose EPA's motion (Dkt.
No. 20).

//

1 Respectfully submitted,

2 Date: October 27, 2014

3
4 SAM HIRSCH
5 Acting Assistant Attorney General
6 Environment and Natural Resources Division

7 /s/ Leslie M. Hill

8 LESLIE M. HILL (D.C. Bar No. 476008)
9 U.S. Department of Justice
10 Environment & Natural Resources Division
11 Environmental Defense Section
12 601 D Street N.W., Suite 8000
13 Washington D.C. 20004
14 Leslie.Hill@usdoj.gov
15 Telephone (202) 514-0375
16 Facsimile (202) 514-8865

17 *Attorneys for Defendant*

18
19 Of counsel:
20 Barbara A. Nann
21 Assistant Regional Counsel
22 U.S. Environmental Protection Agency, Region 6
23
24
25
26
27
28

1 Date: October 27, 2014

2
3 /s/ Tony Mendoza email authorization 10/27/14
4 CASEY A. ROBERTS (CA Bar No. 253474)
5 SIERRA CLUB
6 85 Second Street, 211d Floor
7 San Francisco, CA 94105
8 (415) 977-5710
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16 (415) 977-5793 (facsimile)
17 tony.mendoza@sierraclub.org

18 *Attorneys for Plaintiff Sierra Club*
19
20
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27
28

1 **[PROPOSED] ORDER**

2 Pursuant to Stipulation and for good cause shown, the initial Case Management
3 Conference ("CMC") set for November 5, 2014 (Dkt. No. 7) is hereby continued until ____
4 November, 2014 at 1:30pm in Courtroom 11, 19th Floor.

5
6 **IT IS SO ORDERED.**

7
8 DATED this _____ day of October, 2014.

9
10
11 JAMES DONATO
12 UNITED STATES DISTRICT JUDGE
13
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21
22
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24
25
26
27
28

Nann, Barbara

From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Monday, October 27, 2014 12:29 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Thanks Leslie. Tony is in a hearing today, but when I've had a chance to discuss with him, we'll get back to you as soon as possible. I do not expect we'll have any concerns.

It seems like it might help to clarify in the motion that we are not requesting a continuance of the ADR conference, just the CMC. Also, should we expressly seek a continuance of the deadlines for 26(f) statements as part of this motion, so there is no ambiguity?

Casey

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5710
(415) 977-5793 fax
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Leslie

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Monday, October 27, 2014 3:33 PM
To: Casey Roberts
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: RE: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

If we're going to mention the ADR conference, let's go ahead and ask that it be continued for the same reason since I would expect we would just tell the ADR staff that there is a pending motion which will trigger then to set another call in a month. I was just trying to keep it simple. Proposed addition:

Further, the parties request that the ADR Phone Conference set for October 31, 2014 at 10:00am (Dkt. No. 18) also be continued until after the court rules on the Motion.

Proposed order: The ADR Phone Conference set for October 31, 2014 at 10:00am (Dkt. No. 18) is hereby continued until a after the Court rules on the pending motion (Dkt. No. 19). The ADR Program Office will issue a revised scheduling notice accordingly.

I would also file the stipulation as an ADR stipulation so the ADR staff acts on it as well.

I don't believe that we need to mention the statement due date because the court's order (Dkt. No. 7) states:

*If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Monday, October 27, 2014 1:29 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

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Leslie

Nann, Barbara

From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Monday, October 27, 2014 3:43 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Hi Leslie,

Thanks for pointing out that the court's order already automatically extends the related deadlines. I just talked to Tony and we are fine with the joint stipulation -- thank you so much for drafting and reaching out to us. Hopefully the court will act on the motion to transfer soon.

Casey

Casey Roberts
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Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

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Staff Attorney

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Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Monday, October 27, 2014 3:45 PM
To: Casey Roberts
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: RE: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Thanks Casey. Just so we're on the same page, you're okay with the stip with the changes including adding the ADR sentence?

Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Monday, October 27, 2014 4:43 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

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Sent: Monday, October 27, 2014 1:29 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
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Casey

Casey Roberts

Staff Attorney

Sierra Club Environmental Law Program

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Leslie

Nann, Barbara

From: Hill, Leslie (ENRD) <Leslie.Hill@usdoj.gov>
Sent: Wednesday, October 29, 2014 6:44 PM
To: Casey Roberts
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: RE: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Casey --

The court hasn't yet acted on our request to continue the case management conference which is a bit unusual. Usually those are addressed pretty quickly. For the ADR teleconference, the scheduling notice says to contact Ms. Forehand about scheduling issues. It seems inefficient to take up their time if the case ends up being transferred, so I'd like to email Ms. Forehand with the note below.

With regard to the 26(f) report, it's due today w/o the continuance. Let's discuss tomorrow if an order does not show up by tomorrow morning. I don't want to file a report with this Court unnecessarily, but I suppose one will have to be filed eventually, so perhaps we should just do it. I can do a draft based on a similar case that explains that we expect to settle though have not completed our respective management approvals, etc., but offers a briefing schedule in the event that doesn't happen for some reason as a back-stop.

Let me know if you're okay with the email to the ADR office and discussing the 26(f) tomorrow in the event we don't see an order.

Thanks.

Leslie

Ms. Forehand --

The parties have requested a continuance of the initial case management conference and the ADR Phone Conference pending resolution of Defendant's motion to transfer venue. The Court has not yet ruled on our request, but we wanted to advise the ADR Program Staff. If possible, to avoid holding a conference for a matter that might not remain in the District, we suggest that the conference be rescheduled to allow time for the Court to act on our request. Counsel for both parties are generally available during the week of November 10.

Best regards,
Leslie

From: Casey Roberts [mailto:casey.roberts@sierraclub.org]
Sent: Monday, October 27, 2014 4:51 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Yes -- I meant the joint stipulation as modified in your email. Even if the ADR call only lasts a few minutes, it is just one more thing to schedule around, so I'd rather continue it as well.

Casey

Casey Roberts
Staff Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5710
(415) 977-5793 fax
casey.roberts@sierraclub.org

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From: Casey Roberts [<mailto:casey.roberts@sierraclub.org>]

Sent: Monday, October 27, 2014 4:43 PM

To: Hill, Leslie (ENRD)

Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea

Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

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Nann, Barbara

From: Casey Roberts <casey.roberts@sierraclub.org>
Sent: Wednesday, October 29, 2014 6:59 PM
To: Hill, Leslie (ENRD)
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: Re: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

Hi Leslie,

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Best regards,

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Sent: Wednesday, October 29, 2014 7:30 PM
To: Casey Roberts
Cc: Tony Mendoza; Nann, Barbara; Anderson, Lea
Subject: RE: Sierra Club v McCarthy - Joint Stipulation to Continue the Case Management Conference

I think you are right that tomorrow is probably acceptable. I'm about to leave for the day, so look for the draft in the morning.

Leslie

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Sent: Wednesday, October 29, 2014 7:59 PM
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